IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2023	Pronounced on : 14.09.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.643, 658 & 660 of 2014

Crl.A.No.643 of 2014

1. Rajesh Kataria Kataria,
   S/o.Mohan Lal,
   No.1, Hunters Lane,
   Hunters Road, Chennai – 112.

2. M/s.Kataria Exports Private Limited,
   No.19, Guruthope Sathuvachari, Vellore.
   Registered Office No.15, Vaikunda Vathiar Street,
   Sowcarpet, Chennai – 79
   Represented by its Managing Director,
   Rajesh Kataria Kataria.

... Appellants/Accused Nos.1 & 5

/versus/

Inspector of Police,
SPE, CBI, ACB, Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. pleased to call for the records of the case in C.C.No.11 of 2002 on the file of XI Additional City Civil & Sessions Judge (CBI cases relating to Banks and Financial Institutions), Chennai, and set aside the judgment of conviction and sentence imposed on the appellants by order dated 08.12.2014.

For Appellants : Mr.Manoj Sreevalsan

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I).

Crl.A.No.658 of 2014

V.Ramaswamy,
S/o.R.Venkataraman,
No.15/D, Thiru Vi.Ka Street, 1st Floor,
Ayanavaram, Chennai-23 ... Appellant/Accused No.4

/versus/

The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai.
(RC.No.6, 15, 21 & 22(A)/2001) ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C. r/w 27 of Prevention of Corruption Act, 1988., pleased to admit the appeal and call for the records from the Trial Court in C.C.No.11 of 2002 on the file of XI Additional City Civil & Sessions Judge for CBI cases, relating to Banks and Financial Institution, Chennai, hear the Counsel for appellant/accused No.4 and to set aside the conviction and sentence passed in C.C.No.11 of 2002, dated 08.12.2014 by the Learned XI Additional City Civil & Sessions Judge for CBI Cases, relating to Banks and Financial Institution, Chennai.

For Appellant : Mr.A.V.Somasundaram, Senior Counsel
For M/s.Lakshmipriya Associates

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I)

Crl.A.No.660 of 2014

M.Venkatakrishnan (M/44 Yrs),
S/o.Late.N.Mahalingam,
Flat No.4, 1st Floor Srinivasa Apartments,
No.2, II Norton Street,
Mandaveli, Chennai – 28. ... Appellant/Accused No.3

/versus/

State by,
Inspector of Police,
CBI, ACB, Chennai.
(RC.No.6, 15, 21 & 22(A)/2001/
SPE, ACB/Chennai) ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., pleased to set aside the conviction and sentence imposed on him by the XI Additional City Civil and Sessions Judge for CBI Cases, Chennai, dated 08.12.2014 in C.C.No.11 of 2022 allow the appeal and pass such further order.

For Appellant : Mr.R.John Sathyan, Senior Counsel,
for Mr.Swami Subramanian

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (C.B.I)

COMMON JUDGMENT

The appellants before this Court are the accused in C.C.No.11 of 2002, on the file of the 11th Additional City Civil Court, CBI Cases related to Bank and Finance Institutions, Chennai.

2. Based on the complaint given by T.R.Chawla, Deputy General Manager, Chennai Region of Dena Bank, Chennai, on 12.03.2001 to the Superintendent of Police, SPE, CBI, ACB, Chennai, the respondent police registered a complaint in RC. No. MA1 2001 A 0006 on 14.03.2001 against one Shri Bharat Sha and 9 others. The said complaint by T.R.Chawla was consequence of the complaint received from one of the customers of Dena Bank regarding commission of fraud at Dena Bank, Vellore branch relating to Foreign Currency Non Resident [FCNR] deposit. The customer by name K.Sinnappan and S.Arukkani, residence of Singapore alleged that they made FCNR deposit in account No.310 for a sum of Rs.522739.38 USD on 18.08.2000 through one Bharath Shah. The said deposit had been used for taking loan without their authority. Further enquiry in the bank has revealed that contrary to the procedure and rules framed under the Foreign Exchange Management Act, the Branch Manager Shri V.Ramasamy [A4] had sanctioned overdraft of Rs.1.72 Crores in favour of M/s.Kataria Exports Private Limited and as a collateral security, FCNR deposit been used without knowledge of the depositor. The fraudulent act been carried out pursuant to the conspiracy among Shri Bharat Shah through whom the depositor remitted the money. Vinod Lohiya, Rajesh Kataria, J.V.Payani and M/s.Kataria Exports Private Limited are private individuals, V.Ramasamy and M.Venkatakrishnan both are Managers of Dena bank at the relevant point of time. The Chief Manager T.R.V.Dixit, Natarajan and Krishnaswamy were other persons suspected to be the accused in this complaint. T.R.Chawla made similar complaint on 08.05.2001 in respect of commission of fraud in FCNR deposit account No.1984, which is in the name of Mr.Ashok Issardoss Lakhani and Roopa Ashok Lakhani, this complaint was registered in RC.No.MA1 2001 A 0015. On the even date another complaint in respect of FCNR account No.10002 was made by Mrs.P.Jayalakhmi Rao and Chaitanya Kumar Rao, this complaint was registered in RC No.MA1 2001 A 0021. The 4th complaint by T.R.Chawla, the Deputy General Manager was on even date in respect of FCNR account No.304 in the name of Harish V.Pawani and Mrs.Bharati H Pawani, this complaint was registered in RC.No.MA1 2001 A 0022 on 23.05.2001.

3. As per the complaint given by T.R.Chawla, the *modus operandi* in all these cases of fraud is that the Non Residence Indian living abroad through third parties have deposited money under the FCNR scheme. Their deposit been used to avail overdraft facility by Rajesh Kataria, Director of M/s.Kataria Exports Private Limited without the knowledge of the depositors. For the said purpose, the FCNR deposit receipts been forged. The original has been retained by the intermediaries, who facilitated the depositors to deposit their money, and fabricated receipts were sent to the depositors. They all came to know about the fraud only when the letter of confirmation emanated by the Dena bank.

4. The respondent police on completion of investigation filed single final report, which was taken on file by the Special Court for CBI Cases in C.C.No.11 of 2001. At the time of framing of charge, one of the accused by name Vinod Lohiya died and the charge against him got abated. As against the remaining five accused, the following charges were framed:

> *Charge No.1*
>
> *FIRSTLY that you A1 to A5 during the period 1999-2001, conspired together at Chennai and Vellore and other places in Tamil Nadu and in furtherance of that you cheated the Dena Bank by raising fraudulent loans against FCNR deposits without the knowledge of the depositors and without confirmation from the depositors and based on fabricated/forged documents such as Account opening terms, lien letters, etc, and you forged the signature of the depositors on the letters and account opening forms and also caused disappearance of documents in the process thereby caused wrongful loss of Rs.2,71,44,564.16 to Dena Bank and corresponding wrongful gain for yourselves and that you thereby committed offences punishable U/S 120-B r/w 420,*

201, 467 r/w 471, 468 r/w 471 IPC and 13(2) r/w 13(1)(d) of P.C.Act, 1988 and within my cognizance.

Charge No.2:

Secondly, that you A1 to A5 during the period and place as mentioned in the 1st charge fraudulently and dishonestly cheated the Dena Bank in the manner as follows:

a) You A2 M.Venkatakrishnan issued an FCNR deposit receipt bearing No.2513912 dt:9.9.99 for US $92,518.08 in the name of Dr.(Mrs)P.Jayalakshmi Rao and her son Shri Chaitanyakumar Rao. The maturity value of this FCNR deposit was USD 97439.65 you A2 M.Venkatakrishnan with a dishonest and fraudulent intention, did not send the FCNR deposit receipt directly to the depositors by Regd. Air Mail, as laid down in the procedure, but delivered it to Shri Vinod Lohia (deceased) In furtherance of his criminal conspiracy with you A1 Shri Rajesh Kataria and Shiri Vinod Lehia, you A2 M.Venkatakrishnan sanctioned a lean of 28,44,000/- on 16.9.99 to you A1 'Rajesh Kataria against the security of the FCNR No.2513912 dt:9:9:99 based on fabricated consent letter dt:31.8.99 containing forged signatures of the depositors: You A2 M. Venkatakrishnan, knowing fully well that the depositors were not in India sanctioned this 3rd party loan, without verification and Confirmation, within a span of 6 days from the date of issue of the FCNR deposit against loan documents wherein the signatures of the depositors viz, Mrs.(Dr) P.Jayalakshmi Rao and her son shri Chaitanyakumar Rao are forged in furtherance of the conspiracy a fake FCNR receipt, was sent to the depositors by you A1 Shri Rajesh

Kataria and Shri Vinod Lohia in connivance with you A2 M.Venkatakrishnan. The depositors were under the impression that the FCNR deposit receipt held by them was original The FCNR account opening form sent by the depositors is not available in bank records.

b)You A1 Rajesh Kataria opened the S.B. A/c bearing No.6481 on 16.9.99 itself in Dena Bank, Vellore branch duly authorised by you A2 M.Venkatakrishnan The amounts from the loan accounts were withdrawn by you A1 Rajesh Kataria on various dates through your above mentioned S.B.A/c.

e) You A2 M.Venkatakrishnan issued a FCNR deposit bearing No.2513978 dt:10.12.99 (value date being 29.11.99) for USD 159325 in the names of M/s. Vijayalakshmi, Shri K,Sinnappan and Smt.Arukkani, you A2 M.Venkatakrishnan did not send the original FCNR deposit receipt directly to the depositors by Reg Air Mail, as per laid down procedure. Instead, you A2 dishonestly and fraudulently delivered, it to you A1 Rajesh Kataria and to Shri Vinod Lohia. A fake FCNR deposit receipt No:2513978 at:10:12.99 was sent to the depositors who were under the impression that it was original. The original account opening form sent by the depositors is not available in Bank records whereas the form available in Bank records contained forged signatures of the depositors.

(d)You A2 M.Venkatakrishnan in furtherance of the said criminal conspiracy, knowing fully well that loan sanctioned by you on 16.9.99 to you A1 Rajesh Kataria against the FCNB of Dr.(Mrs).PJayalakshmi Rao was still outstanding, with a dishonest and fraudulent intention, sanctioned an OD of Rs.39,20,000 on 16.3.2000 (OD A/c No.129) to you A5 M/s Kataria Exports Private Limited against the security of FCNR

deposit receipt No.2513978 dt:10:12.99 of M/s Vijayalakshmi, K.Sinnappan and Smt.S.Arukkani, based on fabricated consent letter dt:6.3.2000 and loan documents which contained forged signatures of the depositors,

e) The opening of the current account in the name of you A5 M/s Kataria Exports Pvt. Ltd in Dena Bank, Vellore branch was authorised by you A2 M.Venkatakrishnan on 16.3.00 only and sanctioned an OD on the same date which is most irregular. The amount was withdrawn by you A1 Rajesh Kataria representing A5 M/s.Kataria Exports Pvt.Ltd, on various dates.

(f)You A2 M.Venkatakrishnan issued a FCNR deposit receipt bearing No.2514048 at:31.3.00 for USD 76,980 in the name of Shri Ashok Lakhani and Smt.Roopa Ashok Lakhani. You A2 M.Venkatakrishnan by abusing your official position, did not send the original FC deposit receipt directly to the depositors. Instead, it was handed over to Shri late Vinod Lohia who retained the original and sent a fake FCNR deposit receipt to the depositors. The. original FCNR account opening form sent by the depositors is not available in the bank records. The FCNR account opening form was substituted with a form containing the forged signatures of depositor by you 42 in connivance with you A1 Rajesh Kataria and Shri Late Vinod Lohia and the original account opening form sent by the depositors is not available in the bank records for which you A2 is responsible.

g)You A5 T.R.V.Dixit, then Sr.Manager, Dena Bank, T.Nagar branch, Chennai issued a FCNR bearing No.4301073 dt:31.5.2000 for USD 97179.58 in the name of Dr.(Mrs) P. Jayalakshmi Rao and her son Shri Chaitanyakumar Rao. In *furtherance of conspiracy, you A4 delivered the original FCNR deposit receipt to Shri Manoj Kataria, brother of you A1 Rajesh Kataria, instead of sending it by Regd. Air Mail to the depositors directly. The original FCNR account opening form sent by the depositors is not available in the Bank records and that the account opening form available in Bank records contained forged signatures of the depositors. The account opening form was substituted by Shri late Vinod Lohiya. A fake FCNR deposit was sent by you A1 to the depositors who were under the impression that it was original.*

h)You A4 T.R.V.Dixit in furtherance of conspiracy with a dishonest intention, sanctioned a OD of Rs.37,50,000 on 3.6.2000 to you A5 M/s Kataria Exports Private Limited against the security of the original FCNR No.4301073 dated 31.5.2000 based on letter of pledge which contained forged signatures of the depositors. You A5 T.R.V.Dixit knew fully well that the FCNR contained forged discharge signatures of the depositors on the reverse side as it was evident from the fact that you yourself had issued the FCNR receipt only on 31.5.2000 and that the depositors are residing in Australia and they were not in India during the relevant period. On 5.6.2000, the Limit in the OD A/C No.300154 was changed to Rs.37,50,000 consequent to the above sanction and various amounts were withdrawn by you A1 Shri Rajesh Kataria of you A5 M/s Kataria Exports Pvt.Ltd on various dates and an amount of Rs.36,25,729.16 is outstanding in the OD A/c 300154 as on 9.10.2001

i) You A4 T.R.V.Dixit, issued a FCNR/SDR bearing No. 430492 dt: 3.8.2000 for GBP 86971.55 in the name of Shri Hareshkumar Pawani and Smt.Bharti H.Pawani, But, you A5

T.R.V. Dixit, with a fraudulent and dishonest intention and by abusing your official position, handed over FCNR/SDR No.4301492 dated 3.8.2000 for GBP 86,971.55 to you Al shri Rajesh Kataria and late Shri Vinod Lohiya, you A2 M.Venkatakrishnan, in connivance with you A4 Dixit, you A4 sent a 'fake FCNR deposit receipt dt.3.8.2000 to the depositors who were under the impression that it was original. The original FCNR account opening form sent by the depositors containing their photographs and a rubber stamp impression that no lien/charge/encumbrance is to be created on this deposit" is not available in the bank records. The FCNR account opening form available in the bank records did not contain photographs, the above rubber stamp impression and it contains forged. signature of the depositors. You A4 Dixit is responsible for replacement.

j) You A4 T.R.V. Dixit, in furtherance of conspiracy, on 23.8.2000 sanctioned a limit of Rs.41,00,000 to you A5 M/s.Kataria Exports Pvt. Ltd. against the security of FCNR bearing No.430142 dated 3,8.2000 of Shri Haresh Kumar Pawani and Smt. Bharti H. Pawani based on documents containing forged signatures of the depositors. You A4 T.R.V. Dixit on 23.8.2000 itself debited the LTD A/C.No.1319 and credited the amount of Rs.44,00,000 to OD A/c.No.300154, you A5 Dixit knowing fully well that the depositors were not in India during the said period and that the earlier loan sanctioned against the FCNR of Dr (Mrs.) P. Jayalakshmi Rao and Shri Chaitanyakumar Rao is still outstanding, sanctioned this loan. An amount of Rs.46,51,095 is still outstanding in LTD 1319 as on 7.6.2001.

k) You A3 V. Ramasamy, succeeded you A2 M. Venkatakrishnan as Branch Manager of Dena Bank, Vellere branch, in furtherance of conspiracy, abused your official position and issued a FCNR deposit receipt bearing No.2514387 dated 7.9.2000 as renewal of the FCNR No.2513912 dated 9.9.1999 without closing the loan pending against it. When the FCNR deposit bearing No.2513912 dated 9.9.1999 was due for renewal on 7.9.2000, you A3 V. Ramasamy in connivance with you Al Rajesh Kataria and A2 M. Venkatakrishnan renewed the FCNR for its maturity value and issued a fresh FCNR bearing No.1214387 dated 7.9.2000 in the names of Dr (Mrs) P. Jayalakshmi Rao and her son Shri. Chaitanyakumar Rao without closing the loan pending against it, contrary to the procedure. You A3 V.Ramasamy in connivance with you Al & A2 sanctioned a loan of Rs.29,96,000/- to you Al Rajesh Kataria on 7.9.2000 itself against the security of renewed FCNR No.2514387 dated 7.9.2000, of Mrs.(Dr.) P.Jayalakshmi Rao and Shri Chaitanyakumar Rao. The loan was sanctioned without verification/ confirmation based on loan documents containing forged signatures of the depositors. On the same day i.e., 7.9.2000 you A3 transferred a sum of Rs.20,57,855 from out of the loan of Rs.29,96,000/- for the closure of the loan sanctioned by you A2 M.Venkatakrishnan on 16.9.1999. You A3 V.Ramasamy is well aware that the depositors are not in India and it was not possible for you Al Rajesh Kataria and late Vinod Lohiya to obtain the discharge signatures of the depositors on the FCNR receipt which was issued on 7.9.2000 and thus it contained forged discharge signatures of the depositors. As on 10.1.2001, an amount of Rs.30,87,174/- was *outstanding in the loan account of you Al Rajesh Katara, sanctioned on 7.9.2006*

l) "The depositors K. Sinnappan and Smt. S. Arukkani had another FCNR deposit account with T.Nagar branch, Chennai vide FCNR deposit receipt No.4301599 dated 6.9.2000 for USD 522739.38 for a period of 12 months. You A2: M. Venkatakrishnan compelled the depositors to transfer the deposit to Vellore branch. You A4 shri Ramasamy get the FCNR deposit transferred from T.Nagar-bránch, Chennai and issued a fresh FCNR bearing No.12514526 dated 13.11.2000 without the endorsement made by the depositor that 'no lien' charge' encumbrance is to be created on the deposit' and delivered it to you Al shri Rajesh Kataria and late Shri Vinod Lohiya. Late Shri Vinod Lohiya retained the original and a fake FCNR deposit receipt was sent to the depositors.

m) You A3-Ramasamy in connivance with you Al Rajesh Kataria, deceased Vinod Lohiya, A2 M. Venkatakrishnan and A4 Dixit on 12.12.2000 sanctioned an OD of Rs.1.72 crores (OD A/c No.300134) to you A5 M/s. Kataria Exports Pvt. Ltd. against the security of the FCNR bearing No.2514526 dated 13.11.2000 without the knowledge/consent of the depositors and based on fabricated consent letter dated 13.11.2000 on which date the deposit receipt was issued in Vellore branch. The letter of pledge contained forged signatures of the depositors. The FCNR deposit dated 13.11.2000 also contained forged discharge signatures of the depositors.

n) You A3 V. Ramasamy in furtherance of criminal conspiracy with you Al Rajesh Kataria, late Vinod Lohiya, A2 M.Venkatakrishnan and A4 Dixit on 12.12.2000 itself fraudulently diverted an amount of Rs.42,45,843 from this OD A/c.No.300134 to the OD A/C.No.129 illegally sanctioned by A2 M. Venkata- krishnan on 16.3.2000 against FCNR deposit of M/s.Vijayalakhmi Shri K. Sinnappan and Smt. S. Arukkani for its closure.

o) You A3 Ramasamy by abusing your official position did not renew the FCNR No.2513978 dated 10.12.99 on 29.11.2000 with a dishonest intention for the amount remaining after adjusting OD pending against it. Instead, you waited till 12.12.2000 and closed the OD sanctioned on 16.10.2000 against FCNR No.2513978 dated 10.12.1999 out of the proceeds of the OD sanctioned by you on 12,12,2000 against another FCNR deposit of K. Sinnappan and Smt. S.Arukkani which was transferred from T.Nagar branch, Chennai. FCNR deposit No.2513978 dated 10.12.99 was renewed by issuing, a fresh FCNR deposit receipt bearing No.2514548 dated 12.12.2000. This renewed FCNR No.2514548 dated 12.12.2000 was fraudulently delivered to late Vinod Lohiya after obtaining his acknowledgement on the reverse side of the counter-foil who again sent a fake FCNR deposit receipt to the depositors. The FCNR deposit receipt is not traceable. The amount from OD A/C.No.300134 was withdrawn by you Al Rajesh Kataria of A5 M/s. Kataria Exports Pvt.Ltd. on various dates and an amount of Rs.1,31,80,387 was outstanding as on 7.3.2001.

p) You A3 V.Ramasamy, in furtherance of criminal conspiracy with you Al Rajesh Kataria. A2 M.Venkatakrishnan and A4 T.R.V. Dixit, knowing fully well that the loan sanctioned to you Al Rajesh Kataria/A5 Kataria Experts Pvt. Ltd. Earlier against FCNR deposit of Ms. Vijayalakshmi, K. sinnappan & Smt. S. Arukkani was still outstanding fraudulently and illegally sanctioned an OD of Rs.23,67,000 on 27.9.2000 (OD A/C 777778) to you Al Rajesh Kataria against the security of FCNR No.2514048 dated 31.3.2000 of Shri Ashok Lakhani and Smt. Roopa Lakhani without the knowledge/consent of the depositors and without confirmation and based on fabricated consent letter dated 25.8.2000 and Letter of Pledge dated 27.9.2000 and the FCNR deposit receipt containing the forged signature of the depositors. The amount was credited to the SB A/c of you Al Rajesh Kataria. An amount of Rs.25,99,729 was outstanding in OD A/c No.777778 of you Al Rajesh Kataria as on 31.5.2001.

q) Thus, you Al Rajesh Kataria in furtherance of conspiracy with the other accused secured loans in his name and in the name of your company M/s. Kataria Exports Pvt.Limited, A5 of which you are the Managing Director, against FCNR deposits of the above depositors, without their consent, based on fabricated documents and getting the signatures forged of the depositors. The account opening forms submitted by the depositors were substituted and the originals were not available in the records of the Bank. Fake FCNR deposit receipts were sent to the depositors. The amounts sanctioned with the fraudulent intention by you A2, A3 and A4, public servants were credited to the account of you Al Rajesh

Kataria and you AS M/s. Kataria Exports Pvt. Ltd. and withdrawn fraudulently by them thereby causing wrongful loss to the Dena Bank and corresponding wrongful gain for themselves.

r) You A2 to A5 in conspiracy with you A1 Rajesh Kataria delivered original FCNR deposit receipts of the above depositors to A1 Rajesh Kataria and late Shri Vinod Lohiya, instead of sending it directly to the depositors, allowed the original account opening forms to be substituted with the one containing forged signatures of the depositors, sanctioned third party loans without getting express consent/confirmation of the depositors against the documents containing forged signatures and knowing fully well that other loans are still outstanding, allowed fraudulent credit of the amount sanctioned to their accounts and thus facilitated fraudulent withdrawal of the amount sanctioned fraudulently by them thereby caused wrongful loss to Dena Bank and corresponsing gain to themselves and you A1 to A5 thereby committed an offence punishable U/s 420 IPC and within my cognizance.

Charge No:3:

THIRDLY, that you A2 M.Venkatakrishnan, A3 Ramasamy and A4 T.R.V. Dixit.

You A2 to A4 during the period and place as shown in the 1st charge fraudulently used as genuine certain documents viz, FCNR deposit receipts, lien letters, consent/confirmation, etc, which you knew at the time when used it to the forged *document and that you thereby committed an offence punishable U/s 467 /w 471 IPC and within my cognizance.*

Charge No.4

FOURTHLY, you A1 to A4 during the period and place as shown in the 1st charge fraudulently used as genuine certain documents viz, account opening forms, etc, which you knew at the time of when used it to be forged documents and that you thereby committed an offence punishable U/s 468 r/w 471 IPC and within my cognizance.

Charge No.5:

FIFTHLY, that you A2 to A4 during the period and place as shown in the 1st charge in pursuance of conspiracy knowing fully well that certain offences such as criminal conspiracy, cheating using the forged document as genuine at the time of using it and criminal misconduct punishable with Sec.120-B, 420, 468 /w 471 IPC and 13(2) /w 13(1)(d) of P.C Act, 1988 have been committed, did cause certain evidence of the said offences to disappear, to wit the loan applications/documents of Smt.Jayalakshmi Rao, K.Sinnappan, Smt.Arukkani etc, with the intention of screening the offences committed by you A2 to A4 from legal punishment and that you thereby committed an offence punishable U/s 201 of IPC and within my cognizance.

Charge No.6:

SIXTHLY that you A2 to A4 during the period and place as shown in the 1st charge by corrupt or illegal means or by otherwise abusing your position as such public servants obtained for yourselves pecuniary advantage to the extent of Rs.2,71,44,564.16 from Dena Bank, Vellore branch, T.Nagar branch, Chennai and thereby you committed an offence punishable u/s 13(2) r/w 13(1)(a) of P.C Act, 1988 and within my cognizance.

5. To prove these charges, the prosecution examined 29 witnesses and marked 353 Exhibits. On behalf of the accused, 2 witnesses were examined and marked 38 Exhibits.

6. The trial Court held A1 to A5 guilty of offence under Sections 120-B r/w.420, 467 r/w.471, 468 r/w.471 & Section 420 IPC and under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. As far as the charge under Section 201 IPC, A2 to A4 were acquitted. A1 found guilty for the substantive offence under Section 468 r/w.471 IPC, A2 to A4 were found guilty under Sections 467 r/w.471 and 468 r/w. 471 IPC and Section 13(2) r/w. 13(1)(d) of P.C.Act and A5 Company found guilty under Sections 120-B r/w.420 IPC, 467 r/w.471 and 468 r/w. 471 IPC and Section 13(2) r/w. 13(1)(d) of P.C.Act and they have been convicted and sentenced as below:

Accused	*Offence under Section*	*Conviction and Sentence imposed by the trial Court*
A1	120-B r/w 420 of I.P.C of I.P.C	To undergo one year R.I and to pay fine of Rs.2,000/- in default to undergo S.I for three months
	120-B r/w 467 r/w 471 of I.P.C	To undergo one year R.I and to pay fine of Rs.2,000/- in default to undergo three months S.I
	120-B r/w 468 r/w 471 of I.P.C	To undergo one year R.I and to pay fine of Rs.2,000/-, in default to undergo three months S.I
	120-B r/w 13(2) r/w 13(1)(d) of P.C. Act	To undergo one year R.I and to pay fine of Rs.2,000/-, in default to undergo three months S.I
	420 of I.P.C	To undergo five years R.I and to pay fine of Rs.5,00,000/- to Dena Bank, T.Nagar Branch as compensation as per Section 357(1) (b), in default to undergo three months S.I.
	U/s.468 r/w 471 of I.P.C	To undergo three years R.I and to pay fine of Rs.5,000/- in default to undergo three months S.I.
A2 to A4	U/s.120-B r/w 420 of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I
	U/s.120-B r/w 467 r/w 471 of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I.
	U/s. 120-B r/w 468 r/w 471 of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each in default to undergo three months S.I
	U/s.120-B r/w 13(2) r/w 13(1)(d) of P.C Act	To undergo one year S.I and to pay fine of Rs.2,000/- each in default to undergo three months S.I
	U/s.420 of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I.
	U/s.467 r/w 471 of I.P.C	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I

	U/s.468 r/w 471 of I.P.C	To undergo one year S.I and to pay fine of Rs.10,000/- each, in default to undergo three months S.I
	13(2) r/w 13(1)(d) of P.C. Act	To undergo six months S.I and to pay fine of Rs.2,000/- each, in default to undergo three months S.I
A5	120-B r/w 420 of I.P.C, 467 r/w 471, 468 r/w 471 of I.P.C and Section 13(2) r/w 13(1)(d) of P.C Act.	To pay fine of Rs.10,000/- for each count payable by A1, the Managing Director of A5 Company
	U/s.420 of I.P.C	To pay fine of Rs.10,000/- payable by A1, the Managing Director of A5 Company.

7. Being aggrieved by the judgment and sentence, Crl.A.No.643 of 2014 is preferred by Rajesh Kataria [A1] and M/s.Kataria Exports Private Limited [A5]. Crl.A.No.658 of 2014 is filed by V.Ramasamy [A4] as per the ranking in the judgment] and Crl.A.No.660 of 2014 is filed by Venkatakrishnan [A3] .

8. The case of the prosecution is that the deceased Vinod Lohiya, the financial consultant used to mobilise bank deposits through his foreign contacts. The NRI customers through Vinod Lohiya used to deposit money under the FCNR scheme. The FCNR deposit receipts used to be collected by Vinod Lohiya from the bank and he will forwarded it to the customers. If the depositors requires loan, he used to arrange with the bank. Whereas in the four

FCNR deposits, pursuant to the criminal conspiracy to defraud Dena bank, the said Vinod Lohiya, in connivance with the officials of Dena bank by misusing the FCNR deposit receipts, had raised loan. He fabricated similar looking deposit receipts and sent it to the customers using the original FCNR receipts by creating lien. The 1st accused Rajesh Kataria availed loan as overdraft facility for his business in the name of his company M/s.Kataria Exports Private Limited [A5] to the tune of Rs.2.71 Crores. A1 was not doing any genuine jewellery business in the name and style of A5. M/s.Kataria Exports Private Limited was sanctioned loan only on the strength of the FCNR deposits.

9. The trial Court has accepted the case of the prosecution that the misuse of FCNR deposit to avail loan without knowledge of the depositors ought not to have happened without the connivance of the bank officials Venkatakrishnan [A3] and Ramasamy [A4]. The trial Court has drawn such conclusion, since the act of A3 and A4 in opening the FCNR accounts in the name of NRI customer and handing over the original receipt to Vinod Lohiya [A2]; the sanction of overdraft facility to third party (M/s.Kataria Exports Private Limited) creating lien on the FCNR without verifying the genuineness of pledge letters and discharge of the depositors in FCNR receipts; the renewal of deposits with forged letters were fully within their knowledge and were part of criminal conspiracy between A1 to A5.

10. The trial Court held that there are sufficient acceptable evidence to show that A2 to A4 had full knowledge that all the pledge letters alleged to discharge and endorsement on the reverse of the FCNR deposit receipts were forged. Inspite of the knowledge accepted it as genuine to cheat the Bank as well as the depositors.

11. When the original depositors were in Foreign countries during the relevant point of time, the original FCNR receipts, soon after deposit, lien created over it by pledging and were produced back to the bank on the same day or two or three days later with the endorsement of the depositors. This was not possible, when the depositors were residing in the foreign country. A2 to A4 dishonestly by abusing their official position had without suspecting the endorsements sanctioned the loan to A5 company, in which, A1 is the Managing Director. This has led sanction loan to a tune of Rs.2.71 Crores. The dishonesty of the bank officials has enabled A1 to avail loan to an extent of 2.71 Crores without offering any genuine security.

12. To arrive at the above said conclusion, the trial Court had relied upon the evidence of PW.19-T.R.Chawla, the General Manager, Dena bank, Head Office, Mumbai, who had set law into motion by forwarding the complaints which he received from four depositors by name K.Sinnappan and S.Arukkani, Ashok Issardoss Lakhani and Roopa Ashok Lakhani, Jayalakshmi Rao and Chaitanyakumar Rao, Haresh kumar V.Pawani and Bharti H.Pawani.

13. On behalf of the depositors Jayalakshmi Rao and Chaitanya Kumar Rao, [PW.9] N.S.Chandrasekaran had spoken about the letter correspondences between him and the depositors Jayalakshmi Rao. Ashok Issardoss Lakhani and Roopa Ashok Lakhani are one set of the depositors, they were examined as PW.18 and PW.20 respectively, they have identified their signature in the account opening form and denied the signature found in the pledge letter. For the depositors K.Sinnappan and Arukkani, their Agent Bharat Shah been examined as PW.21. Haresh Pawani is one of the depositors examined as PW.23, who had categorically deposed that he never visited Dena bank at T.Nagar branch for availing any loan.

14. As far as the private accused Rajesh Kataria [A1] and his company M/s.Kataria Exports Private Limited [A5] in which A1 is the Managing Director, it is claimed that A1 is a genuine entrepreneur dealing in Manufacturing of jewellery and have established its unit at MEPZ, Tambaram. Having its head office at No.19, Guruthope, Sathuvachari, Vellore. When he was in need of finance, he took the help of Vinod Lohiya (deceased) who had good rapport with the banks. A1 had fully trusted Vinod Lohiya and was not aware that the FCNR deposit receipts given as a security for his loan or for availing overdraft facility been fraudulently retained by Vinod Lohiya and the pledge on the deposits were made without the knowledge of the depositors. The *modus operandi* adopted by the deceased Vinod Lohiya was exclusively within his knowledge and he provided the FCNR receipts as surety for a charge of 1% of the loan sanctioned as consultancy charge.

15. The Appellants contended that the learned trial Judge had improperly understood the evidence and has held that there is no evidence to prove that A1 and A5 have local domestic market business at Vellore and export business set up at MEPZ, Tambaram. The 1st accused, who is a qualified graduate and expert in diamond grading, in order to set up a jewellery manufacturing unit to cater the need of local as well as export market found M/s.Kataria Export Private Limited company in the year 1998 and the same was duly incorporated. While to cater the local domestic market, business was set up at No. No.19, Guruthope, Sathuvachari, Vellore. For the sake of export, attempts were made to set up manufacturing unit at Madras Export Processing Zone, Tambaram. For the said purpose Import and Export code from the Director General of Foreign Trade was also obtained. For availing finance, he approached Dena bank through Vinod Lohiya (deceased), who is the finance consultant. The forgery or fraud alleged to have been committed by Vinod Lohiya was not within the knowledge of A1. A1 defaulted in repayment of the loan due to failure in effectively commencing the full fledged manufacturing. While part of the loan amount sanctioned was used for the implementation of the project at Madras Export Processing Zone, Tambaram, where A1 was setting up the manufacturing unit. The balance amount remained in the account and the same was frozen. Referring the testimony of the witnesses extensively, A1 for himself and on behalf of A5 had filed a detailed written argument to substantiate that he had no dishonest intention while availing the loan.

16. The learned counsel appearing for A1 and A5/appellants in

Crl.A.No.653 of 2014 summed up his arguments stating that despite sanctioned loan of Rs.1.72 Crores, the appellants utilised only Rs.1.31 Crores over the period of three months in small tranches for establishment of its unit at Tambaram. The loan was availed only after submitting proper project report. A1 had not forged any of the documents and he did not make any false representation to the bank. There was no meeting of mind with the bank officials to do any unlawful or dishonest act. Ex.P146 a self serving document of Vinod Lohiya (deceased) cannot be relied upon. Though A-1 is recipient of loan, he had no role in the alleged fraud and therefore, he cannot be prosecuted for the breach of civil contract.

17. The learned counsels for the appellants in Crl.A.Nos 658 and 660 of 2014, who are the bank officials and public servants held guilty for misconduct under the Prevention of Corruption Act as well as for conspiracy to cheat and forge the documents to use it as genuine, submitted that the appellants have performed their duty in due course of banking business and transaction. There was no dishonest intention to cheat the bank while sanctioning the loan to A1 based on FCNR receipt, which are genuine and accompanied with the pledge letter of the depositor. Further, the bank has proceeded against A1 and A5 before DRT for recovery of loan amount and the decree has been passed in favour of the bank. While so, a civil transaction cannot be converted into criminal prosecution to persecute the bank officials, who had discharged their duty in the course of normal business transaction and it will be unfair to continue the criminal proceedings and also tantamount to abuse of process of law.

18. The contention of these appellants is that the prosecution had not proved the charge of forgery or cheating against them. There is no evidence to show that these appellants namely A3 and A4 had forged any of the documents. Except the relationship of customers and the banker, there was no other transaction either verbally or financially between them and the borrower A1. There is no evidence to show that there was private meeting between A3 and A4 with A1. There is no bar to advance overdraft loan against third party securities. From the project report and the inspection report of PW.10, it is evident that A1 was doing gold business and proposed to construct the factory at Export Process Zone at Tambaram. He had obtained Import and Export code number. Bankers had no knowledge about what has been transpired between A1 and Vinod Lohiya (deceased), who had in his possession the original FCNR deposit receipts and the authorisation letter of the depositors, when the banking rule permits the authorised persons of FCNR depositors can represent them to the bank for facilitate the transaction. Since the depositors are abroad, there is no reason to suspect Vinod Lohiya, who interacted with the bank on behalf of the foreign depositors. More so, when Vinod Lohiya came with the deposit applications and account opening form on behalf of the depositors. If the original deposits was substituted by Vinod Lohiya, the Manager in the bank can have no knowledge about the said substitution or forgery of the signatures of the original depositor. Vinod Lohiya had submitted the original FCNR deposits to the bank. He had forged the signature of the depositors in the pledge letter. Te forgery was not done by the bank officials. The handwriting expert opinion also does not incriminate the bank officials for any forgery. When the circular of the bank does not insist the physical presence of the depositors while sanctioning loan of less than one Crore rupees, the Branch Managers cannot be held liable for sanctioning loan to third party by taking FCNR deposit as security.

19. The learned counsel appearing for the appellants/ Accused 3 and 4 (Bank Officials) specifically contended that to attract offence under Section

120-B IPC, the prosecution should have proved meeting of mind to do any dishonest act. Furthermore, the act done in the course of discharging duty cannot be construed as an act of conspiracy. It is contended by the bank officials that A3- Venkatakrishnan was a Branch Manager of Vellore branch from 26.10.1998 to 12.08.2000 and succeeded by A4-Ramasamy from 12.07.2000 to 08.03.2001. The overdraft facility to A1 for Rs.29,96,000 was sanctioned by A4 on 07.09.2000. Ex.P41 and Ex.P43, FCNR deposit receipt No.2514526 dated 13.11.2000, and the sanction of loan to A5 company though dated 13.11.2000 the loan was disbursed only after 12.12.2000 after compliance of all facilities. Therefore the conclusion of the trial Court that on the date of FCNR deposit itself, loan sanctioned to A5 with dishonest intention is factually incorrect.

20. It is contended by the learned counsels for A3 and A4 (Bank Officials) that the forgery found in the deposit opening form, pledge letter and back side of the deposit receipts cannot be verified by the Branch Managers, who are not experts in hand writing. The representative of the depositor alone was interacting with the bank right from the beginning. The Branch Managers, who had not seen the real depositors, cannot be expected to know the signature of the depositors to ascertain whether the signature in the application form and in the pledge letters are genuine or not. The non examination of the depositors namely Ramasundaram, K.Sinnappan, S.Arukkani, Jayalakshmi is fatal to the prosecution case.

21. Specifically, the learned counsel appearing for the 4th accused, Ramasamy canvassed that the FCNR account was not opened during his period as Branch Manager and therefore, A4 had no occasion or reason to suspect the signatures of the depositors on the reverse of the FCNR receipt and pledge letters. Further, it was A4, who wrote letters to the depositors for confirmation of lien created on their FCNR deposits, only on his letter, the depositors came to know about the misuse of their deposit receipts by their Agent Vinod Lohiya. Therefore, A3 who joined the Vellore branch of Dena bank on 12.07.2000 cannot be held responsible for any substitution of application form occurred before he joined the branch. If any depositors authorised anyone to avail loan through letter of pledge together with original deposit receipt, same can be accepted as security and loan can be sanctioned as per the manual of the instructions of the bank. There is no moratorium period between the date of deposit and sanction of loan. The evidence of PW.29 that upto 75% of the deposit amount can be sanctioned as loan on the same day not been taken into consideration by the trial Court. The best witness to speak about forgery in the deposit receipt and pledge letter is the depositors themselves. Only two depositors PW.18 Roopa Ashok Lakhani and PW.20 Ashok Issardas Lakhani, the joint depositors and Haresh Pawani were examined. The reason for non examination of other depositor K.Sinnappan and S.Arukkani not explained.

22. PW.14 admits that sending FCNR deposit to the depositors through their Agent is in tune to the banking practise. So A4 cannot be suspected for handing over the renewed FCNR deposit receipts to the Agent. Further, the counsel submitted that the author of the forgery could not be ascertained through handwriting expert opinion. Bharath Shah, the FIR named accused was the conduit between the facilitator, Vinod Lohiya (deceased) and the borrower. The Investigating Officer had not arrayed him as an accused, but examined as witness for prosecution.

23. Per contra, the learned Special Public Prosecutor appearing for CBI submitted that T.R.Chawla/the Deputy General Manager on receiving specific complaint from the customers regarding misuse of the FCNR receipt gave four complaints to CBI and same came to be registered and taken up for investigation. T.R.Chawla was examined as PW.19, he has spoken about the FCNR deposits in the name of K.Sinnappan and S.Arukkani, the complaint given by Roopa Ashok Lakhani and Ashok Issardas Lakhani, complaint of Jayalakshmi Rao and Chaitanya Kumar Rao and the complaint by Haresh kumar V.Pawani and Bharti H.Pawani. The specific case of the FCNR depositors is that their application for deposit were substituted and the FCNR deposit receipts were misused for sanctioning loan to A5 company represented by A1.

24. To prove this fact, the prosecution has examined PW.18 Roopa Ashok Lakhani and PW.20 Ashok Issardas Lakhani , PW.23 Haresh kumar V.Pawani, who are all depositors. The signatures found in the deposit receipts issued in their name were not their signature. The pledge letter in their name is denied by them specifically and as far as the depositors K.Sinnappan and S.Arukkani, PW.21 Bharath Shah, who was managing the investment portfolio of Mr.K.Sinnappan and S.Arukkani and assisting them to deposit money in India, had identified the signature of K.Sinnappan and S.Arukkani and said they are forged. This witness PW.21 is the person who was handling the account of K.Sinnappan and S.Arukkani. Therefore, he has acquaintance with the signature of K.Sinnappan and S.Arukkani.

25. PW.21 had deposed that in the year 1999 with the assistance of Vinod Lohiya (deceased), who is known to him since his father's day, transferred the FCNR deposit of K.Sinnappan and his wife S.Arukkani maintained with Karnataka bank, Madurai to Dena bank, T.Nagar. He handed over the original matured FCNR receipts, Account Opening Form duly filled and signed by the deposit holders with a specific endorsement in the account opening form that "no lien/charge/encumbrance is to be created on the deposits". The account opening form Ex.P137 was filled by Ramasundaram, the Manager. On perusing Ex.P137, PW.21 Bharath Shah has categorically said that the signatures in the account opening form are not that of K.Sinnappan and S.Arukkani. The deposit receipt given to him by Vinod Lohiya marked as Ex.P.138 is dated 06.09.2000. This was given to PW.21 by Vinod Lohiya and it contains the name of S.Arukkani wrongly as 'S.S.Arukkani'. Therefore, he handed over the FCNR receipt to Vinod Lohiya to carry out necessary correction. However, the message Ex.P.147 received by him which contains instruction in writing that S.K.Sinnappan should be read as Cinnarkudan @

K.Sinnappan. This instruction was not given by him to Vinod Lohiya. Later on, he received the FCNR deposit receipt in the name of S.K.Sinnappan and S.Arukkani which is marked as Ex.P.142. On receiving the FCNR receipt Ex.P.142, he forwarded the same to Ramasundaram, the Manager of Mr.K.Sinnappan and S.Arukkani. PW.21 had further deposed that after a month, Vinod Lohiya approached him to transfer the deposit lying in Dena bank, T.Nagar branch Dena bank to Vellore branch and on his persuasion and assurance by Mr.Dixit, Manager, Dena bank, who died pending appeal Crl.A.No.650 of 2014 (hence abated) necessary endorsement was obtained in the back of the FCNR deposit receipt Ex.P.42 from the depositors and the deposit was transferred to Dena bank, Vellore branch. PW.21 had ascertained that the signatures on the revenue stamp of the deposit is not that of K.Sinnappan and S.Arukkani.

26. After extensively referring the evidence of PW.21, the learned Special Public Prosecutor submitted that non examination of S.Arukkani and K.Sinnappan not fatal to the case of the prosecution, since the person who is acquainted with the signature of K.Sinnappan and S.Arukkani and who was dealing with the deposits was examined and further evidence of PW.21 throws light on the *modus operandi* adopted by the accused persons in cheating the Dena bank as well as the depositors who trusted them.

27. Referring the evidence of PW.9 Chandrasekaran, the joint Director, National Small Industries Corporation, Government of India, who was handling the FCNR deposits of Dr.K.V.Mohanarao and his wife Jayalakshmi Rao who had implicated Vinod Lohiya for handing over the Ex.P92 and Ex.P125, the fake deposit receipts in the name of the Jayalakshmi Rao and her son Chaithanyakumar Rao. When he received a call from Deputy General Manager, Dena bank, Chennai during the month of March 2001, he met him and clarified about two deposits and PW.9 had informed the Deputy General Manager that there was no consent given by the depositors to pledge the receipts. When the records in connection with the pledge of the receipts shown to PW.9, he had stated that they are not the signature of the depositors namely Jayalakshmi Rao or her son Chaithanyakumar Rao. The evidence of PW.9 clearly show that a fake FCNR receipt been given to PW.9 to forward onward to the depositors Jayalakshmi and her son Chaithanya. The application for account opening form found to be substituted.

28. The learned Special Public Prosecutor submitted that the bank Manager at T.Nagar branch had facilitated the transfer of the account from T.Nagar branch to Vellore branch in order to screen the old records containing the genuine signature of the depositors. Thereafter, the applications been substituted with fake signature. Further fake deposit certificate Ex.P92 and Ex.P125 been handed over by the deceased Vinod Lohiya to PW.9 and the depositors made to believe as if it is a genuine deposit receipts.

29. The learned Special Public Prosecutor further submitted that the evidence of PW.9 apart from implicating Vinod Lohiya has also deposed that when he asked Vinod Lohiya why he had substituted the application and given a fake deposit receipts, Vinod Lohiya admitted that he has done so to help his client Rajesh Kataria [A1] and he promised to get back the original receipt and restore it. The letter of Vinod Lohiya addressed to PW.9 as well as the depositor Jayalakshmi which is dated 10.03.2001 speaks volume about the role of Vinod Lohiya and the *modus operandi* adopted by him to favour A1 in connivance with the bank officials.

30. The learned Special Public Prosecutor submitted that the letter of the accused (who is no more) addressed to PW.9 and spoken by PW.9 is a crucial evidence though it is written by the accused and in the nature of the extra judicial confession given without any force or compulsion. He being the dead person, the authenticity of this letter being spoken by the recipient of the letter who is admittedly the childhood friend of the author Vinod Lohiya has high evidenciary value. The letter addressed to PW.9 by Vinod Lohiya is extracted below:

> *"Recently I have come to know that one of client M/s.Kataria Exports (P) Ltd., M.D.Mr.Rajesh Kataria with cater with Bank Officials played some mischief and arranged some facilities involving your F.D.receipts.*
>
> *I have come know that the F.D.copy given to me seems to be fake, which I am not at all aware, besides your two receipts, my other 6,7 clients Receipts are also involved. I am pursuing with necessary action to restore the original receipts to the Depositors"*

31. The learned Special Public Prosecutor summed up his argument stating in all these cases, forgery of depositors signatures made to sanction loan to A1. The evidence collected during the investigation clearly show that A1 had no worthy business and his intention to establish industry at MEPZ was at nascent stage. However more than 1.30 Crores of Rupees released to him as loan by taking FCNR deposits by fraud. A2 to A4 had knowingly contributed to cheat the bank.

32. Heard the learned counsels and documents perused.

33. The evidence marshalled by the prosecution clearly proved the fact that the loan sanctioned to A5 company represented by A1 taking the FCNR's of (1) K.Sinnappan and S.Arukkani, (2) Roopa Ashok Lakhani and Ashok Issardas Lakhani, (3) Jayalakshmi Rao and Chaitanya Kumar Rao and (4) Haresh kumar V.Pawani and Bharti H.Pawani was without the knowledge of the depositors. In the pledge letters, the signatures of the depositors been forged. To screen the forgery, the original applications for opening the account itself been substituted with forged application. To facilitate the substitution, the money deposit in the other branch of Dena bank been transferred to Vellore branch. The persons who has facilitated the transfers of FCNR account is A2 Vinod Lohiya who is no more. However, the manner in which transfer of account to Vellore Dena bank and utilisation of those deposits to sanction loan to Kataria is out come of a planned conspiracy designed by the deceased Vinod Lohiya. The beneficiary is apparently Rajesh Kataria [A1]. Though A1 claims that he had genuine intention to manufacture jewelleries at MEPZ for export and to do local business from the Vellore premises, no material evidence available that there was real commercial activities at No.19, Guruthope Sathuvachari, Vellore, either catering the local domestic market or any other targeted area. This address been used only to avail loan from Dena bank, Vellore Branch. For the said purpose FCNR's laying in other branch were transferred to Vellore branch. The depositors were unaware of transfer or creation of lien all alone behind the back and they had come to know about the creation of lien over the deposit only when the intimation received by them. This intimation has emanated from A3 soon after he took charge as Branch Manager of Dena bank, Vellore Branch. A1 who claims to have establish his company in the year 1998 and availed loan in the year 1999 till 2001 had not commenced his business at all for years to come. He had been availing the loan from time to time to an extend of 2.71 Crores, but nothing tangible by way of investment activity noticed during inspection. Vinod Lohiya in his letter addressed to PW.9 which is marked as Ex.P146 conveniently claim ignorance and implicate A1 and the bank officials for the fraud in sanctioning loan to A1 based on FCNR's.

34. The trial Court after perusing the bank statement of A1 and A5 company marked as Ex.P48 and Ex.P49 had observed that there is only withdrawal of the amount subsequent to overdraft and there is no corresponding credit into the account, the said amount remained outstanding. The payment from this account to Vinod Lohiya implicates that Vinod Lohiya (deceased) had received kick back for his assistance to the fraudulent act.

35. This Court on perusing the trial Court judgment hold that, though separate charges against each accused for each transaction and substantive offences were not framed, a careful perusal of the charge reveals that A1, A2, A3 and A5 had meeting of mind to dishonestly sanction loan to A1 and A5 company based on forged documents. Therefore, omission to frame separate charges against them for substantive offence is only an omission in framing charge and a not material to vitiate the trial. Though the handwriting expert could not ascertain the person, who forged the signature, the prosecution able to prove that the signatures found in the stamp receipt of the FCNR and pledge letter are not that of the real depositors. Further the investigation able to recover all the forged FCNR's which has been forwarded to the depositors by the deceased Vinod Lohiya or through Vinod Lohiya. The contention of the accused counsel that PW.21 Bharath Shah ought to have been made as an accused is also not a sustainable arguments. Bharath Shah who was dealing the Portfolio of K.Sinnappan and S.Arukkani had explained to the Court how the crime has occurred and the role of Vinod Lohiya, the brain behind the crime, who had conceived the design to cheat Dena bank with the aid and assistance of the bank officials and in turn facilitated A1 to make unlawful gain.

36. On deep analysis of evidence, undoubtedly the crime had happened only with the connivance of the bank officials, but whether the appellants in Crl.A.Nos.658 and 660 of 2014 who are the bank Managers during the relevant point, had any knowledge of forgery of the documents to be considered. There is a probability that they were made to believe that the depositors have consented to create lien over the deposits for advancing loan to A1 since FCNR receipts were all original and the signature in the account opening form itself substituted and the place and persons who have substituted unable to fix by the prosecution and the needle of suspicion points towards the deceased Vinod Lohiya.

37. The contention of the branch Manager who were arrayed as A3 and A4 is that the representative of the depositors was holding the original

FCNR deposit receipts and present it while creating lien along with documents like pledge letter and authorisation produced by the depositors. Apparently they were found to be genuine. Since it was accompanied with original FCNR, they have granted overdraft to A1 and his company A5.

38. This explanation to some extend is possible in respect of A4 Ramasamy who joined as Branch Manager subsequently after creating lien and who had taken care to intimate the depositor about the lien created, but the same benefit cannot be extended to A3 who had not ensured to intimate to the depositor while A1 keeping on raising loan limit. Initially the Bank sanctioned loan only of Rs.31 lakhs. But it has been gradually increased to Rs.1.72 Crores and A1 was allowed to withdraw upto 1.31 Crores within a period of 3 months. Record indicates that the last loan sanctioned to A1 and A5 was on 12.12.2000 and the last withdrawal of money from the account was on 20.02.2001, thereafter, the account was freezed.

39. Hence, the benefit of doubt is extended to A4 Ramasamy who is the appellant in Crl.A.No.658 of 2014. In respect of other accused/Appellants, their Appeals are dismissed and the trial Court conviction and sentence is confirmed.

40. In fine,

(i) Crl.A.No.658 of 2014 filed by Ramsamy [A4] is allowed. The conviction and sentence in C.C.No.11 of 2002 is set aside. Fine amount paid if any, to be refunded. Bail bond stands cancelled.

(ii). Crl.A.Nos.643 and 660 of 2014 are dismissed. The conviction and sentence passed against A1, A3 and A5 in C.C.No.11 of 2002 on the file of the XI Additional City Civil & Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai, is hereby confirmed. The trial Court is directed to secure the appellants/Accused 1 and 3 and commit them to prison to undergo the remaining period of sentence. The period already undergone by the accused shall be set off under Section 428 of Cr.P.C.

14.09.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/non speaking order
rpl

To:-

1.The XI Additional City Civil & Sessions Judge CBI Cases, Relating to Banks and Financial Institution, Chennai.

2.The Inspector of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Branch, Chennai.

3.The Special Public Prosecutor (CBI), High Court, Madras.

DR.G.JAYACHANDRAN,J.

rpl

Pre delivery common Judgment made in
Criminal Appeal Nos.643, 658 & 660 of 2014

14.09.2023